PUNESWARAN RAJARETNAM v. LEMBAGA PENCEGAHAN JENAYAH & ORS AND ANOTHER CASE

HIGH COURT MALAYA, SHAH ALAM
ABD MAJID HAMZAH JC
[CRIMINAL APPEALS NO: BA-44-229-08-2017 &
BA-44-341-11-2017]
23 MARCH 2018

PREVENTIVE DETENTION: *Detention order – Renewal of detention – Detention order renewed for another year before expiry – Challenge against renewal orders – Whether there was non-compliance with procedural requirements – Whether grounds for renewal of detention stated in renewal orders – Whether statement containing allegations of fact served on each applicant – Whether reference made to report of inquiry officer and outcome of review – Whether renewal order amounted to double jeopardy – Prevention of Crime Act 1959, s. 19A(1)*

The applicants ('the detenues') were detained in their respective Pusat Pemulihan Khas pursuant to s. 19A(1) of the Prevention of Crime Act 1959 ('the Act'). Before the expiry of their detention orders, the Prevention of Crime Board ('the Board') issued another order, signed by the Chairman, renewing their detention for another year ('the renewal orders'). In the present applications, the detenues challenged the renewal orders on the ground of non-compliance with the requirements under s. 19A(1) of the Act, namely (i) the grounds for the renewal of the detenues' detention were not stated and no statement containing the allegations of fact was served on each of them; (ii) it was incumbent upon the Board to state whether the renewal of the detention order was necessary in the interest of public order, public security and prevention of crime; and (iii) there was no reference made to the report of the inquiry officer under s. 10 of the Act and the outcome of review under s. 11 of the Act. The detenues further submitted that the renewal order amounted to double jeopardy as art. 149 of the Federal Constitution ('the FC') does not specifically exclude art. 7.

Held (ordering detenues be set at liberty):

(1) For the purposes of renewing the detention order, there was no necessity for the Board to consider another round of a report of the inquiry officer submitted under s. 10 and the outcome of any review under s. 11 of the Act. In respect of the requirement whether the Board was satisfied that the detention was necessary in the interest of public order, public security or prevention of crime, it was clear that these phrases should be read disjunctively (paras 18 & 19)

(2) The Chairman had deposed, in his affidavit, that the Board was satisfied that the detention be renewed based on the same grounds. Therefore, there was no need to restate the grounds in the renewal orders. Furthermore, the detenues did not raise any complaint as far as their earlier detention was concerned or any contradiction between the earlier orders and the renewal orders. (para 20)

(3) The issue of double jeopardy does not apply in preventive detention. The fact that art. 7 of the FC is not excluded does not make any difference since art. 7 specifically deals with conviction or acquittal, which has nothing to do with preventive detention. (paras 22 & 23)

(4) Section 19A(4) of the Act, in no uncertain terms, provides that a detenu is entitled to make representations to the Advisory Board in accordance with the prescribed procedures. The prescribed procedures are regs. 3 and 4 of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('the Regulations') which necessitate Form 1 to be given to the detenu. The process of making representations is triggered with the serving of Form 1. (paras 37 & 40)

Case(s) referred to:

Abdul Razak Baharudin & Ors v. Ketua Polis Negara & Ors and Another Appeal [2005] 4 CLJ 445 FC ***(refd)***

Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perindungan Kamunting, Taiping & Ors [2002] 4 CLJ 249 FC ***(refd)***

Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister Of Home Affairs), Malaysia [1969] 1 LNS 65 FC ***(refd)***

Khor Hoi Choy v. Menteri Dalam Negeri, Malaysia & Ors [1986] 1 CLJ 55; [1986] CLJ (Rep) 403 HC ***(refd)***

Kok Wee Siong v. Timbalan Menteri Dalam Negeri, Malaysia & Anor [1992] 1 CLJ 681; [1992] 2 CLJ (Rep) 651 HC ***(refd)***

Mat v. Inspector-General of Police, Malaysia & Anor [1974] 1 LNS 91 FC ***(refd)***

Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v. Lee Gee Lam & Another Case [1993] 4 CLJ 336 SC ***(refd)***

Murugan Supparamaniam v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 4 CLJ 405 FC ***(refd)***

Musa Salleh v. PP [1973] 1 LNS 93 FC ***(refd)***

Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 4 CLJ 47 SC ***(refd)***

Palautah Sinnapayan & Anor v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 2 CLJ 133 FC ***(refd)***

Ponggol Marina Pte Ltd v. Central Provident Fund Board (Public Prosecutor) [2001] 4 SLR 68 ***(refd)***

PP v. Hun Peng Khai & Ors & Other Cases [1984] 2 CLJ 290; [1984] 2 CLJ (Rep) 391 HC ***(refd)***

Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(refd)***

SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors [2009] 6 CLJ 705 FC ***(refd)***
Tan Weng Chiang v. PP [1992] 4 CLJ 2094; [1992] 1 CLJ (Rep) 324 SC ***(refd)***
Yean Hock Seng v. Minister of Home Affairs [1975] 2 MLJ 279 ***(refd)***
Zakaria Jaafar & Tan Poh Hee v. Menteri Hal-Ehwal Dalam Negeri, Malaysia & Ors [1989] 2 CLJ 1011; [1989] 2 CLJ (Rep) 691 HC ***(refd)***

Legislation referred to:
Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 7A(5)
Essential (Security Cases) Regulations 1975, r. 10(2)
Federal Constitution, arts. 5, 7, 9, 10, 13, 149, 150
Internal Security Act 1960, s. 8(1), (7)
Prevention of Crime Act 1959, ss. 10, 11, 19A(1), (4)
Prevention of Crime (Advisory Board Procedure) Regulations 2014, regs. 3, 4

For the applicant - Najib Zakaria; M/s Najib Zakaria & Hisham
For the respondents - Siti Hajar Mat Radzi & Hemy Annerina; SFC

Reported by Najib Tamby

JUDGMENT

Abd Majid Hamzah JC:

Introduction

[1] At the outset, the learned counsel for the detenu informed the Court that he would take this application together with Criminal Application No. BA-44-341-11-2017 *Mohamad Firdaus bin Mohd Akaram v. Lembaga Pencegahan Jenayah & 2 Ors* and that the decision of the former will bind the latter.

Background Facts

[2] The detenu Puneswaran a/l Rajaretnam is being detained in Pusat Pemulihan Khas, Bentong, Pahang since 25 June 2015 under s. 19A(1) of the Prevention of Crime Act 1959 ("Act") for a period of two years. Before the expiry of the detention order, the Prevention of Crime Board ("Board") issued another order on 14 June 2017 signed by the Chairman renewing the detenu's detention for another year beginning from 24 June 2017.

[3] The detenu in Criminal Application No. BA-44-341-11-2017 Mohamad Firdaus bin Mohd Akaram is being detained in Pusat Pemulihan Khas, Simpang Rengam, Kluang, Johor since 31 July 2015 under s. 19A(1) of the Act for a period of two years. Before the expiry of the detention order, the Board issued another order on 5 July 2017 signed by the Chairman renewing the detenu's detention for another year beginning from 30 July 2017.

[4] The Board renewed both the detention orders based on similar grounds on which the detention orders were originally made.

The Complaints

[5] Both detenus are challenging the renewal orders issued against them and their common complaints are as follows:

(i) Instances of non-compliance with the requirements stipulated under s. 19A(1) in renewing the detention order, namely:

(a) the grounds for the renewal of the detenu's detention are not stated and no statement containing the allegations of fact was served on each of them;

(b) It is incumbent upon the Board to state whether the renewal of the detention order is necessary in the interest of public order, public security or prevention of crime; and

(c) there is no reference made to the report of the inquiry officer under s. 10 and outcome of review under s. 11 of the Act;

(b) The renewal orders amount to double jeopardy as art. 149 of the Federal Constitution does not specifically exclude art. 7; and

(c) In respect of Puneswaran there are two orders ie, one signed on 12 June 2017 and another was signed on 14 June 2017.

Submissions

[6] The learned counsel for the detenus submitted that the orders renewing the detention merely state as follows:

> DAN BAHAWASANYA Lembaga Pencegahan Jenayah berpuas hati adalah perlu tempoh Perintah Tahanan itu dilanjutkan atas alasan-alasan yang sama yang atasnya Perintah itu dibuat.

This statement is insufficient according to the learned counsel since s. 19A(1) of the Act mandates the Board to show that the satisfaction was based on whether it was necessary in the interest of public order, public security or prevention of crime to renew the detenus' detention, failing which would render the order defective. References were made to *SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705 and *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 1 MLRA 132.

[7] It was further submitted that the detenus would not know whether the renewal orders are based on the same or different grounds since the grounds are not stated and the statement containing the allegations of fact was not served on each of them.

[8] The learned counsel in addition submitted that s. 19A(1) of the Act imposes a condition precedent before the Board can renew a detention order ie, the Board must consider the report of the inquiry officer under s. 10 and outcome of review under s. 11 of the Act. The affidavit of the Chairman failed to make any reference to this. Thus, there was no evidence to show how the satisfaction was arrived at.

[9] It was further argued that without the statement containing the allegations of fact being served on the detenus, it was not possible for the detenus to make an effective representation.

[10] The learned counsel for the detenus referred to art. 149 of the Federal Constitution under which the Prevention of Crime Act is promulgated and submitted that the said provision makes no exception to art. 7. Hence, the renewal orders amount to double jeopardy.

[11] As for Puneswaran, apparently there are two orders issued for the renewal. One is dated on 12 June 2017 and the other is dated 14 June 2017. Learned counsel himself affirmed an affidavit dated 7 November 2017 where he deposed that he had visited the detenu at the Bentong Prison and requested a copy of the detention order from the prison authorities. Upon perusing the said order, he discovered a discrepancy in that the date of service on the detenu was on 12 June 2017 whilst the said order was signed by the Chairman on 14 June 2017 (exh. "NZ1" of encl. 6). This contradicts the order exhibited by the Inspector Lakman bin Salleh (exh. "LS1" of encl. 4) who served the said order on the detenu. Learned counsel submitted that there was an apparent conflict as to which order was actually served on the detenu and when.

[12] He pointed out that Inspector Lakman bin Salleh deposed that he had served exh. "LS1" on 16 June 2017 but this contradicts exh. "NZ1" which stated that the order was served on 12 June 2017. Thus, it was submitted that the court should draw an inference in favour of the detenu. In support of this contention he referred to *SK Tangakaliswaran Krishnan (supra)* and *Murugan Supparamaniam v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 4 CLJ 405; [2010] 4 MLJ 488.

[13] The learned Senior Federal Counsel ("SFC") in response submitted that there was no requirement under s. 19A(1) of the Act to state the grounds and re-serve the statement containing the allegations of fact. She argued that there are two parts in s. 19A(1) ie,:

(i) the report of the inquiry officer under s. 10 and the outcome of review under s.11 are for the purpose of issuing the detention order; and

(ii) the Board may renew the said detention order if it is satisfied that it is necessary in the interest of public order, public security or prevention of crime.

A She further argued that the order renewing the detention was not a separate or a second order which was independent of the first order but it was one and the same order. Hence, it was not necessary for the grounds and the allegations of fact to be restated and re-served. In fact, she said s. 19A(1) does not require such act to be undertaken.

B **The Law**

[14] Prior to the amendment, s. 19A(1) reads as follows:

> (1) The Board may, after considering the report of the Inquiry Officer submitted under section 10 and the outcome of any review under section 11, direct that any registered person be detained under a detention order for a period not exceeding two years, and may renew any such detention order for a further period not exceeding two years at a time, if it is satisfied that such detention is necessary in the interest of public order, public security or prevention of crime.

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D *Vide* Act A 1549 s. 19A(1) was amended which took effect from 15 December 2017 and provides as follows:

> (1) The Board may direct that any registered person be detained under a detention order for a period not exceeding two years, and may renew any such detention order for a further period not exceeding two years at a time, if it is satisfied that such detention is necessary in the interest of public order, public security or prevention of crime.

E

[15] The effect of the amendment is that there is no longer a requirement for the Board to consider the report of the inquiry officer submitted under s. 10 and the outcome of any review under s. 11. In other words, the detention of the detenu can be made and renewed as long as the Board is satisfied that the detention 'is necessary in the interest of public order, public security or prevention of crime.'

F

[16] As regards both detenus since their detention is being renewed prior to 15 December 2017, the provision of s. 19A(1) before the amendment would be applicable.

G

[17] The issue here is how s. 19A(1) is to be read as there is a comma after the words 'two years' followed by the word 'and' and another comma after the word 'time'. In *Tan Weng Chiang v. PP* [1992] 4 CLJ 2094; [1992] 1 CLJ (Rep) 324; [1992] 2 MLJ 625 the Supreme Court in dealing with reg. 10(2) of the Essential (Security Cases) Regulations 1975 held that there were two situations in the said sub-regulation owing to the presence of the comma followed by the word 'and'. Hence, it should be read disjunctively. Regulation 10(2) reads as follows:

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> Any number of accused persons may be tried together, and they shall be tried together where the Public Prosecutor gives a certificate that it is a fit case for a joint trial.

I

[18] However, as there is another comma after the word 'time', to my mind it connotes something else. Yong Pung How CJ in *Ponggol Marina Pte Ltd v. Central Provident Fund Board (Public Prosecutor)* [2001] 4 SLR 68 held that the phrase between two commas has the same effect as placing the phrase between brackets. Therefore, it is my view that for the purposes of renewing the detention order there is no necessity for the Board to consider another round of a report of the inquiry officer submitted under s. 10 and the outcome of any review under s. 11.

[19] In respect of the requirement whether the Board is satisfied that the detention 'is necessary in the interest of public order, public security or prevention of crime', it is clear that these phrases should be read disjunctively. In *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v. Lee Gee Lam & Another Case* [1993] 4 CLJ 336; [1993] 3 MLJ 673 the Supreme Court speaking through LC Vohrah J (as he then was) at p. 339 (CLJ); p. 678 (MLJ) said:

> We would conclude by saying that in determining the propriety or legality of a detention order made under s. 4(1) the satisfaction of the Minister has to be considered in the light of the limbs under which he acted. The determination of the question as to whether he addressed his mind to the relevant limb or for that matter to both the limbs in making his detention order is a procedural matter and if it is shown that there is some doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the detenu.

[20] The Chairman has deposed in his affidavit that the Board was satisfied that the detention be renewed based on the same grounds. Therefore, there is no need to re-state the grounds in the order renewing the detention. Further, the detenus did not raise any complaint as far as their earlier detention was concerned or any contradiction between the earlier orders and the renewal orders.

[21] Section 19A(1) carries the phrase 'if it is satisfied'. Judicial pronouncements in cases like *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister Of Home Affairs), Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 129; *Abdul Razak Baharudin & Ors v. Ketua Polis Negara & Ors and Another Appeal* [2005] 4 CLJ 445; *Yeap Hock Seng v. Minister of Home Affairs* [1975] 2 MLJ 279 and many more made it clear that the courts cannot question the subjective satisfaction of the Minister and this should equally be the same for the Board.

[22] It is also settled law that the issue of double jeopardy does not apply to preventive detention. In *Palautah Sinnapayan & Anor v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 2 CLJ 133; [2009] 3 MLRA 307 Zulkefli Makinudin FCJ (as he then was) speaking for the Federal Court said:

> We are of the view that the scope and extent of protection enshrined under art 7(2) of the Federal Constitution only applies to criminal offences wherein a person who has been acquitted or convicted of an offence by the court shall not be tried again for the same offence. In this regard we would categorically state here that preventive detention of a detainee under the Ordinance cannot be equated with punitive detention of an accused person found guilty for committing an offence under the criminal law and that preventive detention made against the appellants in the present case is not subject to art 7(2) of the Federal Constitution.

[23] The learned counsel for the detenus attempted to distinguish *Palautah (supra)* in that that case dealt with the Emergency (Public Order and Prevention of Crime) Ordinance 1969 which was promulgated under art. 150 whilst the Prevention of Crime Act 1959 is promulgated under art. 149 and the latter has excluded arts. 5, 9, 10 and 13 of the Federal Constitution but not art. 7. To my mind the fact that art. 7 is not excluded does not make any difference since art. 7 specifically deals with conviction or acquittal which has nothing to do with preventive detention. This has been clearly stated by the Federal Court in *Palautah (supra).* If an authority is needed specifically for art. 149, a similar view can be found in *Musa Salleh v. PP* [1973] 1 LNS 93; [1973] 1 MLJ 167 where the appellant was earlier detained under s. 8(1) of the Internal Security Act 1960 and subsequently was placed under a restriction order and Suffian FJ (as he then was) at p. 169 had this to say,

> Be it noted that a detention order is not a conviction for an offence that has been proved against the detainee. If it were, then clearly he could not be detained again on the same facts. On the contrary a detention order is an administrative order; it is not to punish the detainee.

[24] With regard to the existence of an order stating the service was done on 12 June 2017 Inspector Lakman bin Salleh in his further affidavit in reply has deposed that he had mistakenly written the date as 12 June 2017 instead of 16 June 2017 which he wrote on another copy of the order. I accept that this is a genuine mistake and it is not an afterthought. In fact, the said order exh. "NZ1" shows that the detenu Puneswaran received it on 16 June 2017.

[25] The next issue raised by the learned counsel for both detenus is the right to make representations. The right to make representations is provided for under s. 19(4) of the Act which reads as follows:

> (4) A copy of every detention order made by the Board under subsection (1) shall as soon as may be after the making of the order be served on the person to whom it relates, and every such person shall be entitled to make representations to an Advisory Board constituted under Clause (2) of Article 151 of the Federal Constitution **in accordance with the prescribed procedures**. (emphasis added)

This provision was introduced *vide* Act A 1484 which came into force on 2 September 2015.

[26] In the now defunct preventive laws like the Internal Security Act 1960 and the Emergency (Public Order and Prevention of Crime) Ordinance 1969 provisions were made for extension orders and the procedures which must be complied with eg, the grounds for the extension must be set out and whether they were based on the same grounds; different; or partly on the same and partly on different grounds on which the detention order was originally made.

[27] Judicial pronouncements in *Khor Hoi Choy v. Menteri Dalam Negeri, Malaysia & Ors* [1986] 1 CLJ 55; [1986] CLJ (Rep) 403; *Zakaria Jaafar & Tan Poh Hee v. Menteri Hal-Ehwal Dalam Negeri, Malaysia & Ors* [1989] 2 CLJ 1011; [1989] 2 CLJ (Rep) 691; *Kok Wee Siong v. Timbalan Menteri Dalam Negeri, Malaysia & Anor* [1992] 1 CLJ 681; [1992] 2 CLJ (Rep) 651 and *Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perindungan Kamunting, Taiping & Ors* [2002] 4 CLJ 249; [2002] 4 MLJ 255 had ruled that there was no further representation for a detenu whose detention order was extended based on the same grounds as the earlier detention order. The reason was that the extension order was not a fresh order but it was one and the same order except that it was extended. Hence, there was no necessity to re-serve the statement containing the allegations of fact and Form 1.

[28] The process of serving the allegations of fact and Form 1 would come into play only if the extension was on different grounds; or partly on the same and partly on different grounds. See for example the proviso to sub-s. 8(7) of the Internal Security Act 1960 and sub-s. 7A(5) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969.

[29] Act A 1484 which brought s. 19A(4) into being seems to have departed from the previous scheme where as a result of the said amendment a detenu whose detention order is renewed is entitled to make another round of representations to the Advisory Board.

[30] As far as representations are concerned, the Parliament makes no other provision for whose detention is being renewed except sub-s. 19(4) of the Act and the prescribed procedures can be found in the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ("Regulations 2014"). Again, I could not find any separate provision being made by the Minister for one whose detention is being renewed. It would appear therefore that for the same grounds or different grounds or partly on the same and partly on different grounds, the detenu will be able to make another representation in accordance with the prescribed procedures. And what is obvious here, there is no provision expressly or impliedly excluding a detenu whose further detention is renewed on the same grounds from having the statement containing the allegations of fact and Form 1 being re-served as in the repealed laws mentioned earlier.

[31] Regulation 3 of the Regulations 2014 provides as follows:

(1) When any detained person is brought to a place of detention in pursuance of a detention order, the Officer-in-Charge shall inform the detained person, as soon as practicable after his arrival, of his right to make representations against the detention order within the time and in the manner provided in these Regulations.

(2) When informing a detained person of his right to make representations, the Officer-in-Charge shall give to the detained person three copies of Form 1 of the Schedule.

(3) The detained person shall, if he desires to make representations, complete three copies of Form 1 within fourteen days after the date of his arrival at the place of detention to enable the Officer-in-Charge to forward a copy of Form 1 to the Secretary.

(4) If a detained person fails to complete Form 1 within fourteen days after the date of his arrival at the place of detention, the Officer-in-Charge shall obtain written confirmation from the detained person that he does not wish to make any representations against his detention order and the Officer-in-Charge shall forward the written confirmation to the Secretary.

(5) The Officer-in-Charge shall forward to the Secretary any written representations received by him from a detained person, whether or not the written representations are made within the period referred to in subregulation (3). 16

(6) If any written representations received by the Secretary have not been despatched by the Officer-in-Charge before the expiry of the period referred to in subregulation (3), the written representations shall be deemed to have been made out of time unless the Chairman is satisfied that the delay was not due to the fault of the detained person making the representations but was due to circumstances beyond his control.

(7) If a detained person refuses to accept Form 1 given by the Officer-in-Charge under subregulation (1) or declines to confirm in writing that he does not wish to make any representations against his detention order, the Officer-in-Charge shall inform the Secretary accordingly.

[32] Regulation 4 of the Regulations 2014 states the following:

(1) Any representations against a detention order shall be made in writing.

(2) The grounds of objections to the detention order or the reasons why the detention should cease shall be given in Form 1 and if the space in Form 1 is not sufficient the grounds or reasons may be written on a separate sheet of paper to be attached as an annexure to Form 1.

(3) A detained person shall indicate in Form 1 whether he intends to appear personally or with his advocate or to be represented by his advocate, before the Advisory Board.

[33] In the absence of any other procedure, the procedures provided in regs. 3 and 4, following from sub-s. 19(4) of the Act, should be observed strictly. The learned SFC in her additional written submission contended that apart from the absence of specific allegation on this issue, there was no necessity to re-serve Form 1 as the order renewing the detention is one and the same order.

[34] I have read and re-read the detenus' affidavits in support and I was not able to identify any specific allegation with respect to this issue. The nearest I thought would be paras. 8 and 9 which state as follows:

8. Saya yang telah dinasihati oleh peguam saya bahawasanya Responden-responden telah tidak menumpukan perhatian dan secara mekanikal ketika membuat Lanjutan Perintah ini dan hal ini adalah impak kerana kegagalan perintah yang baru dikemukakan dengan alasan-alasan perintah tahanan itu dibuat seterusnya dilanjutkan tanpa sebarang kegagalan untuk meneliti kesalahan di bawah Akta Pencegahan Jenayah 1959 ini.

9. Saya juga sesungguhnya menyatakan bahawa sekiranya telah dibuat rujukan secara muka ke muka terhadap perintah tersebut, saya dengan ini mencabar agar Responden-Responden atau agen-agennya mengemukakan keterangan afidavit bagi mendedahkan kesemua proses Perintahan Lanjutan ini dilakukan bagi mahkamah yang Mulia ini meneliti samada Responden-Responden telah menjalankan tanggungjawabnya.

But the detenus in the above quoted paragraphs were not referring to the allegations of fact ('pernyataan fakta') and Form 1, instead they were harping on the grounds for the renewal not being supplied or informed and followed by a general allegation which may contain factual and/or legal issues.

[35] The Federal Court in *Mat v. Inspector-General of Police, Malaysia & Anor* [1974] 1 LNS 91; [1974] 1 MLJ 131 apparently stressed on specific allegations must be made. Azmi LP had occasion to deal with this issue and at p. 132 held as follows:

It was also contended that the copy delivered to the appellant was not signed by the Minister. It would have been better if the copy handed to the appellant had also been signed by the Minister but the fact that the copy was not signed or certified to be true, in our view, in the circumstances of the case, did not make the service ineffective. **There is for instance no allegation that the copy handed over to the appellant was different from the original signed by the Minister.** We would therefore conclude that the cancelling order has been properly served and therefore effective. It would appear from the affidavit of A.S.P. Haji Junid that he had served Tan Sri Ghazali's restriction order in the same manner. **There is, however, no complaint in the service of this restriction order.** Since

A in our view the cancelling order had been properly served the second part of the first ground must necessarily fail. Similarly the second ground of appeal also failed. (emphasis added)

[36] Be that as it may, the provisions of sub-ss. 19A(1) and (4) of the Act will only be effected by compliance with regs. 3 and 4 of the Regulations B 2014 irrespective of whether it is a fresh detention order or renewal of the same. Non-compliance with regs. 3 and 4 is an issue of law relating to procedure which can be raised even though it is not pleaded. The Supreme Court in *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 4 CLJ 47; [1994] 3 MLJ 285 speaking through Wan Yahya SCJ held C as follows:

Even in normal rules on pleadings, a party may raise a point of law at the trial itself even though it had not been specifically pleaded. See Independent Automatic Sales Ltd v Knowles & Foster [1962] 3 All ER 27; [1962] 1 WLR 974.

D Under the circumstances, we consider that the applicant was sufficiently entitled to raise an issue of law as one of his grounds in respect of an allegation of non-compliance with the mandatory provisions of the Act.

[37] As I have adverted to earlier, sub-s. 19A(4) of the Act in no uncertain terms provides that a detenu is entitled to make representations to the E advisory board in accordance with the prescribed procedures. The prescribed procedures are regs. 3 and 4 of the Regulations 2014 which necessitate Form 1 to be given to the detenu.

[38] I have also said earlier that the Act makes no distinction between a detention being renewed on the same, different, or partly the same or F different grounds thus, the same process should be accorded to both the detenus here. The statement containing the allegations of fact may not be so crucial here as it will be the same as the one that came with the earlier detention order and since it is being renewed on the same grounds hence, it is not necessary to be re-served. But the same cannot be said for Form 1.

G **[39]** In *PP v. Hun Peng Khai & Ors & Other* [1984] 2 CLJ 290; [1984] 2 CLJ (Rep) 391; [1984] 2 MLJ 318 at p. 325 Edgar Joseph Jr (as he then was) had this to say:

The modern trend of judicial construction of statutes shows that generally, courts lean in favour of a beneficial rather than a strict H construction and I find support for this in the following passage in *Maxwell on Interpretation of Statutes*, 11th Ed., pp. 274 & 275:

The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more I attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature, than

> formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty, and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful influences. The effect of the rule of strict construction might also be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischief aimed at are, if the language permits, to be held to fall within its remedial influence.

A most helpful illustration of the application of the rule of beneficial construction is to be found in the following passage of the judgment of Ungoed-Thomas J. in *Maryon-Wilson's Will Trusts* [1968] Ch 268 282:

> If the court is to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statutes or overriding it but by interpreting in accordance with the judicially presumed parliamentary concern for common sense and justice.

[40] Subsection 19A(4) itself makes reference to 'the prescribed procedures' so the issue whether the Minister may make another set of Regulations or the Board may make its own Rules does not arise. The process of making representations is triggered with the serving of Form 1 as prescribed thus, I think I am not in any way re-writing the sub-ss. 19A(1) and/or (4) of the Act nor usurping the function of the Parliament in holding that the failure to observe regs. 3 and 4 is fatal which renders the orders renewing the detention of both detenus bad. The order of the court, therefore, is that the detenus be set at liberty.